

CASE CLOSED 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DATE _____

VINCENT CARTER,

Petitioner,

Case No. 05-70096

v.

HONORABLE DENISE PAGE HOOD

WARDEN WOLFENBARGER,

Respondent.

ORDER ACCEPTING REPORT AND RECOMMENDATION

This matter is before the Court on Magistrate Judge Virginia M. Morgan's Report and Recommendation dated April 18, 2005. Neither Party has filed objections to this Report.

Magistrate Judge Morgan recommends this Court deny Petitioner's request for mandamus relief and dismiss his petition with prejudice. Petitioner is serving a life sentence for felony murder. On February 22, 2005, Petitioner filed a "Petition for Writ of Mandamus" seeking a court order requiring his immediate release from custody.

State prisoners wishing to challenge the fact or duration of their detention can only file a writ of habeas corpus in federal courts. *Preiser v. Rodriguez*, 411 U.S. 475 (1973). Petitioner has already filed a petition for a writ of habeas corpus in a separate case before the Court. As the Magistrate notes, "[t]o the extent the grounds for relief raised in the mandamus petition were not included in the habeas petition, petitioner may seek leave to amend his habeas petition." (Rep. and Rec. at 2.)

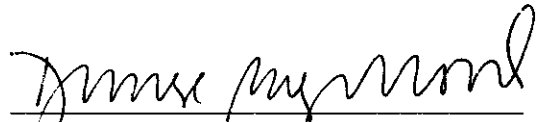
The Court finds that the Magistrate Judge reached the correct conclusion for the proper reasons.

Accordingly,

IT IS ORDERED that the Report and Recommendation of Magistrate Judge Virginia M. Morgan, dated April 18, 2005, is ACCEPTED and ADOPTED as this Court's findings and conclusions of law.

IT IS FURTHER ORDERED that Petitioner's Petition for Writ of Mandamus [**Docket No. 3, filed February 18, 2005**] is DENIED.

IT IS FURTHER ORDERED that this matter is DISMISSED with prejudice.



DENISE PAGE HOOD
United States District Judge

DATED: **MAY 24 2005**